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CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

METRO FUEL LLC, a Delaware limited
liability company,

Plaintiff,

vs.

CITY OF SAN FRANCISCO, a municipal
corporation, COUNTY OF SAN
FRANCISCO, a subdivision of the State
of California, CITY AND COUNTY OF
SAN FRANCISCO, a chartered California
city and county and DOE 1 through DOE
10,

Defendants.

Case No. C07-6067 PJH

**STIPULATION AND ~~[PROPOSED]~~
ORDER GRANTING DEFENDANTS'
MOTION FOR JUDGMENT ON THE
PLEADINGS**

It is hereby STIPULATED and AGREED, by and between Plaintiff Metro Fuel LLC ("Metro Fuel") and the City of San Francisco, County of San Francisco, and City and County of San Francisco (collectively, "the City" or "San Francisco"), through their attorneys of record as follows:

1. On April 17, 2008, Metro Fuel filed its First Amended Complaint.
2. In its First Amended Complaint, Metro Fuel alleged one cause of action under 42

U.S.C. § 1983. Metro Fuel's one cause of action, however, was premised on three distinct legal
STIP. & [PROPOSED] ORDER GRANTING MJOP
USDC C07-6067 PJH

1 theories. First, in paragraphs 23-80, Metro Fuel alleged that Article 6 of the San Francisco Planning
2 Code violated the First Amendment of the U.S. Constitution (the "*Metro Lights* claim"). Second, in
3 paragraphs 81-89, Metro Fuel alleged that the practical effect of San Francisco's ban on new general
4 advertising signs (San Francisco Planning Code section 611) is the reservation "for itself a monopoly
5 over outdoor advertising signs in San Francisco" in violation of the First Amendment of the U.S.
6 Constitution (the "Government Monopoly claim"). Third, in paragraphs 90-101, Metro Fuel alleged
7 that various provisions of Article 6 of the San Francisco Planning Code discriminate against non-
8 commercial speech in violation of the First Amendment of the U.S. Constitution (the "Non-
9 Commercial Speech claim").

10 3. On August 29, 2008, the City filed a motion for judgment on the pleadings under
11 Fed.R.Civ.P. 12(c) attacking Metro Fuel's *Metro Lights* claim on several grounds. On September 12,
12 2008, Metro Fuel filed its opposition to the City's motion.

13 4. On January 6, 2009, the United States Court of Appeals for the Ninth Circuit (the
14 "Ninth Circuit") issued its decision in *Metro Lights, L.L.C. v. City of Los Angeles*, --- F.3d ----, 2009
15 WL 22922 (C.A. 9 (Cal.)) (the "*Metro Lights* decision"). The Ninth Circuit held that Los Angeles's
16 regulatory scheme prohibiting new off-site general advertising signs did not violate the First
17 Amendment, even though Los Angeles allowed off-site advertising on city-owned transit stops and
18 other street furniture.

19 5. Metro Fuel concedes that the *Metro Lights* decision, to the extent it is not reversed in
20 an *en banc* proceeding or by the United States Supreme Court, disposes of its *Metro Lights* claim in
21 this action against San Francisco.

22 6. Accordingly, the parties agree that this Court should grant San Francisco's motion for
23 judgment on the pleadings with respect to the *Metro Lights* claim alleged in paragraphs 23-80 of the
24 First Amended Complaint.

25 7. The parties acknowledge that Metro Fuel has reserved its right to move this Court to
26 reconsider this Stipulation and Order, as allowed by the Federal Rules of Civil Procedure, if the
27 *Metro Lights* decision is reversed in an *en banc* proceeding or by the United States Supreme Court.

1 8. The parties acknowledge that Metro Fuel's Government Monopoly and Non-
2 Commercial Speech claims remain in this action.

3 9. The parties further acknowledge that the remaining grounds set forth in the City's
4 Fed.R.Civ.P. 12(c) motion are not addressed in this stipulation and order, and that the City may bring
5 those challenges to Metro Fuel's Government Monopoly and Non-Commercial Speech claims in a
6 subsequent motion or at trial.

7 DATED: January 20, 2009

DENNIS J. HERRERA
City Attorney

8
9 By: /s/
10 THOMAS S. LAKRITZ

11 Attorneys for Defendant CITY AND COUNTY
12 OF SAN FRANCISCO

13 DATED: January 20, 2009

LAW OFFICES OF PAUL E. FISHER

14
15 By: /s/
16 PAUL E. FISHER

17 Attorneys for Plaintiff METRO FUEL, LLC

18 DATED: January 20, 2009

EMERY CELLI BRINCKERHOFF & ABADY LLP

19
20 By: /s/
21 ERIC HECKER

22 Attorneys for Plaintiff METRO FUEL, LLC
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1 IT IS SO ORDERED:

2 Pursuant to the stipulation of the parties, the City's motion for judgment on the pleadings
 3 under Fed.R.Civ.P. 12(c) is GRANTED IN PART and Metro Fuel's *Metro Lights* claim is
 4 DISMISSED. Metro Fuel's Government Monopoly and Non-Commercial Speech claims, set forth in
 5 paragraphs 81-89 and 90-101, respectively, of the First Amended Complaint remain in this action.
 6 The remaining grounds asserted in the City's Fed.R.Civ.P. 12(c) motion are not addressed in this
 7 order, and the City may assert those challenges to Metro Fuel's Government Monopoly and Non-
 8 Commercial Speech claims in a subsequent motion or at trial.

9
 10 Dated: 1/22/09

11 HONORABLE PHYLLIS J. HAMILTON
 12 JUDGE OF THE COURT

